



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

December 18, 2013

Mr. Gary B. Lawson
Strasburger & Price, LLP
901 Main Street, Suite 4400
Dallas, Texas 75202-3794

OR2013-22029

Dear Mr. Lawson:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 509288 ("One Degree November Payment 10/1/2013 Request").

The Dallas Police and Fire Pension System (the "system"), which you represent, received a request for all records of payment made to One Degree LLC ("One Degree") for work performed during November of 2012. The system claims the submitted information is excepted from disclosure under sections 552.103, 552.136, and 552.143 of the Government Code. We have considered the claimed exceptions and reviewed the submitted information.

Initially, we note the submitted information is subject to section 552.022 of the Government Code. Section 552.022(a)(3) provides the following:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure unless made confidential under this chapter or other law:

...

(3) information in an account, voucher, or contract relating to the receipt or expenditure of public or other funds by a governmental body[.]

Gov't Code § 552.022(a)(3). You assert the submitted information is excepted from release under section 552.103 of the Government Code. However, section 552.103 is discretionary and does not make information confidential under the Act. *See Dallas Area Rapid Transit v. Dallas Morning News*, 4 S.W.3d 469, 475-76 (Tex. App.—Dallas 1999, no pet.) (governmental body may waive section 552.103); Open Records Decision No. 542 at 4 (1990) (statutory predecessor to section 552.103 may be waived); *see also* Open Records Decision No. 665 at 2 n.5 (2000) (discretionary exceptions generally). Therefore, the system may not withhold the submitted information under section 552.103. However, sections 552.136 and 552.143 of the Government Code make information confidential under the Act. Accordingly, we will consider the applicability of these sections to the submitted information.

You assert the submitted information is confidential under section 552.143(c) of the Government Code, which provides as follows:

All information regarding a governmental body's direct purchase, holding, or disposal of restricted securities that is not listed in Section 552.0225(b)(2)-(9), (11), or (13)-(16) is confidential and excepted from the requirements of Section 552.021. This subsection does not apply to a governmental body's purchase, holding, or disposal of restricted securities for the purpose of reinvestment nor does it apply to a private investment fund's investment in restricted securities. This subsection applies to information regarding a direct purchase, holding, or disposal of restricted securities by the Texas growth fund, created under Section 70, Article XVI, Texas Constitution, that is not listed in Section 552.0225(b).

Gov't Code § 552.143(c). You argue the submitted information pertains to the system's direct purchase, holding, or disposal of a restricted security. *See id.* § 552.143(d)(3) (defining "restricted securities" for purposes of section 552.143); *see also* 17 C.F.R. § 230.144(a)(3) (defining "restricted securities" as "securities acquired directly or indirectly from the issuer, or from an affiliate of the issuer, in a transaction or chain of transactions not involving public offering"). You inform us the submitted information involves the Museum Tower, L.P. ("Museum Tower"), which you state is not a governmental body. You state Museum Tower is a limited partnership in which the system has invested through a wholly-owned limited liability company, and its investment was not for purposes of reinvestment. You inform us the law firm representing the system retained One Degree to provide consulting expert services related to anticipated litigation between the Museum Tower and the Nasher Sculpture Center, and the submitted document consists of payment information for those consultation expert services. However, upon review, we find the system has failed to demonstrate how the submitted information pertains to the system's direct purchase, holding, or disposal of a restricted security. Accordingly, the system may not withhold any of the submitted information under section 552.143(c) of the Government Code.

Section 552.136 of the Government Code provides in part the following:

(a) In this section, "access device" means a card, plate, code, account number, personal identification number, electronic serial number, mobile identification number, or other telecommunications service, equipment, or instrument identifier or means of account access that alone or in conjunction with another access device may be used to:

(1) obtain money, goods, services, or another thing of value; or

(2) initiate a transfer of funds other than a transfer originated solely by paper instrument.

(b) Notwithstanding any other provision of this chapter, a credit card, debit card, charge card, or access device number that is collected, assembled, or maintained by or for a governmental body is confidential.

Gov't Code § 552.136(a)-(b). You claim a portion of the submitted information, which you have marked, is confidential under section 552.136. Upon review, we find the system must withhold the account numbers we have marked under section 552.136 of the Government Code.¹ However, you have failed to demonstrate the applicability of section 552.136 to any of the remaining information you have marked, and the system may not withhold it on that ground.

To conclude, the system must withhold the information we have marked under section 552.136 of the Government Code. The system must release the remaining information.

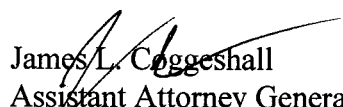
This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for

¹We note section 552.136 of the Government Code permits a governmental body to withhold the information described in section 552.136(b) without the necessity of seeking a decision from this office. See Gov't Code § 552.136(c). If a governmental body redacts such information, it must notify the requestor in accordance with section 552.136(e). See *id.* § 552.136(d), (e).

providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,


James L. Coggeshall
Assistant Attorney General
Open Records Division

JLC/tch

Ref: ID# 509288

Enc. Submitted documents

c: Requestor
(w/o enclosures)